879.

SUPREME COURT OF THE UNITED STATES.

No. 90.

LESSEE OF WILLIAM L. BROWN AND WIFE, PLAINTIFF IN ERROR,

vs.

JOSEPH CLEMENTS AND JONATHAN HUNT.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ALABAMA.

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J. & G. S. Gideon, Printers.

Be it remembered, that on the twenty-third day of June, in the year of our Lord one thousand eight hundred and forty-one, there was filed in the office of the clerk of the Supreme Court a transcript of record in the words and figures following:

THE STATE OF ALABAMA, *Mobile county:*

Be it remembered, that heretofore, to wit, at a circuit court begun and held for the county aforesaid, at the court house in the city of Mobile, on the third Monday of April, A. D. one thousand eight hundred and forty-one, being the nineteenth day of said month—present the honorable Edmund S. Dargan, the judge thereof, presiding—a cause therein then depending, in the words and figures following, was determined, to wit:

JOHN DOE, on the demise of Wm. S. Brown and wife,
vs.
RICHARD ROE, (i. e. Joseph Clements,) tenant in possession.

The plaintiffs issued their declaration in the words and figures following, viz:

Declaration.

THE STATE OF ALABAMA, *county of Mobile:*

In the circuit court of said county, of the term of the fourth Monday of April, 1838, John Doe, plaintiff, by his attorneys, complains of Richard Roe, defendant, in custody, etc., *wherefore the said Richard Roe, defendant, in custody, etc.*, of a plea of trespass in ejectment, etc., wherefore the said Richard Roe with force and arms, &c., broke and entered into a certain lot or tract of land in the said county of Mobile, with the appurtenances thereon, &c., which William L. Brown and Harriet Brown, his wife, had demised to the said John Doe for a term which is not yet expired, and ejected them from their said lot or tract of land, and other wrongs to the said John Doe then did, to the great damage of the said John Doe, and against the peace and dignity of the said State of Alabama. For that, whereas the said William L. Brown and Harriet Brown, his wife, on the first day of January, in the year eighteen hundred and thirty-eight, at Mobile, in the county of Mobile, had demised to the said John Doe the said lot or tract of land situate, lying, and being, and described as follows, that is to say: the east half of the south-west quarter of fractional section number twenty-two, in township four, south of range one, west, in the district of lands subject to sale at St. Stephen's, Ala., containing eighty acres. To have and to hold the said lot or tract of land with the appurtenances to the

said John Doe and his assigns, from the said first day of January, in the year eighteen hundred and thirty-eight, for and during and unto the full end and term of twelve years from thence next ensuing, and fully to be complete and ended. By virtue of which said demise, the said John Doe entered upon the said lot or tract of land above mentioned, with the appurtenances, and became and was thereof possessed for the said term so to him granted. And the said John Doe being so thereof possessed, the said Richard Roe, afterwards, to wit, on the first day of February, 1838, with force and arms, &c., entered into the said lot or tract of land and premises, with the appurtenances, which the said William L. Brown, and Harriet Brown his wife, had demised to the said John Doe in manner and for the term aforesaid, which term hath not yet expired; and ejected the said John Doe from his said lot, and other wrongs to the said John Doe then and there did, to the great damage *damage* of the said John Doe, and against the peace and dignity of the State of Alabama; wherefore the said John Doe saith, that he is injured and hath sustained damages to the value of ten thousand dollars, and therefore he brings his suit, &c.

Notice to tenant.

Blount and Sherman, attorneys for plaintiffs, to Joseph Clements.

I am informed that you are in possession of, or claim title to the premises in this declaration of ejectment mentioned, or some part thereof, and I being sued in this action as a casual ejector only, and having no claim or title to the same, do advise you to appear at the next term of our circuit court for Mobile county, to be held on the fourth Monday of April, 1838, on the first day of said term, before the judge of said court, at the court house of said county, by some attorney of said court, and then and there by rule of the same court to cause yourself to be made defendant; otherwise, I shall suffer judgment therein to be entered by default, and you will be turned out of possession.

Your loving friend,
RICHARD ROE.

Mobile, the 17th day of April, 1838.

Upon which said declaration, the sheriff of Mobile county made the following return, to wit:

Return.

Rec'd 18th April, 1838, and executed the same day by leaving a copy of the within notice with Joseph Clements, who was in possession of the within described premises.

WILLIAM MAGEE,
Sheriff of Mobile county.
By J. P. MAGEE, *Deputy Sheriff.*

Fall term, 1838—December 24th, 1838.

The following order of the court was made in this cause: "Continued by consent."

Spring term, 1839, the following order was made in this cause:

Order of survey.

Upon motion of the plaintiffs by their attorneys, and it appearing to the satisfaction of the court that for the ascertainment of the true boundaries of the premises sued for, a survey of the fractional section twenty-two, in township four south, range one west, of lands subject to entry at St. Stephen's, and also the southwest quarter of said fractional section, together with the possession and improvements of the said Joseph Clements thereon, is necessary. It is therefore ordered by the court, that the surveyor of Mobile county make the surveys aforesaid, and return a map or plan thereof to the next term of this court. It is further ordered, that the surveyor aforesaid, before proceeding to execute the surveys aforesaid, give to the said Joseph Clements or his attorney at least three days' notice of the time of executing the same.

Spring term, 1841—the following order was made in this cause:

Consent rule.

Joseph Clements comes into court and confesses he is in possession of sixteen acres of land, in the tract of land described in the declaration of ejectment, and was at the date of the service of the notice; and that he held as tenant of Jonathan Hunt, and Jonathan Hunt confesses he is landlord of the said defendant, and he prays to be admitted to defend with him; and the defendants confess lease, entry, and ouster of the plaintiff from the premises mentioned in this order, and the defendants are admitted to defend for the land aforesaid, and are required to plead not guilty.

The defendants filed their plea in the words following, viz:

Plea.

The defendants plead not guilty, in short, by consent.

CAMPBELL & CHANDLER,
For defendants.

Issue joined.

SHERMAN & CHAMBERS,
Attorneys for plaintiff.

The defendants filed their suggestion in the following words:

Suggestion of improvements.

The landlord, Jonathan, comes into court and suggests to the court, that he, and those whose estate he hath, have made permanent and valuable improvements on the land for which this suit is brought;

and that he, and those whose estate he hath, have been in the adverse possession of the same for more than three years next before the commencement of this suit, and this the defendant is ready to verify; wherefore he prays, that if verdict is found against him, he may be allowed for the same.

CAMPBELL & CHANDLER,
For defendant.

Patent to Etheridge—A.

Pre-emption certificate, number 4,539.

The United States of America, to all to whom these presents shall come, greeting:

Whereas, James Etheridge, of Mobile county, Alabama, has deposited in the General Land Office of the United States a certificate of the Register of the Land Office at St. Stephen's, whereby it appears that payment has been made by the said James Etheridge, according to the provisions of the act of Congress of the 24th April, 1820, entitled "An act making further provisions for the sale of the public lands," for the southwest quarter of section twenty-two, in township four, south of range one, west, in the district of lands subject to sale at St. Stephen's, Alabama, containing ninety-two acres and sixty-seven hundredths of an acre, according to the official plat of the survey of the said lands returned to the General Land Office by the surveyor general, which said tract has been purchased by the said James Etheridge.

Now know ye, that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said James Etheridge, and to his heirs, the said tract above described. To have and to hold the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said James Etheridge, and to his heirs and assigns forever.

In testimony whereof, I, Andrew Jackson, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington, the thirtieth day of May, in the year of our Lord one thousand eight hundred and thirty-three, and of the independence of the United States, the fifty-seventh.

By the President:

ANDREW JACKSON,
By A. J. DONALDSON, [L. S.]

ELIJAH HAYWARD,
Commissioner of the General Land Office.

Recorded, vol. 7, p. 474, E. and E.

THE STATE OF ALABAMA, *Mobile county, ss:*

I, William Taylor, clerk of the county court of said county, certify that the foregoing is a transcript of the record of a patent from the United States Government to James Etheridge, as recorded in my office in deed book N, page 112.

Given under my hand and seal of office, this 13th day of November, 1839.

[L. S.]

———— ————.

Surveyor's return.

In obedience to the annexed order of the honorable circuit court of Mobile county, after giving notice to the said Joseph Clements, as thereby required, I executed the survey, a plat of which is herewith returned.

MOBILE, *May 24th*, 1841.

CHARLES L. DELAGE,
County Surveyor, Mobile county.

The fractional section No. 22, t. 4, r. 1 west, contains 210 acres. A, B, C, D, shows the east half of the southwest quarter of said fractional section, and contains 80 acres. Lot $2\frac{40}{100}$ shows the improvement and possession of Joseph Clements.

(*For county surveyor's plat and notes, see original.*)

No. 1—*Patent to Stone.*

Pre-emption certificate, No. 4,549.—The United States of America, to all to whom these presents shall come, greeting:

Whereas William D. Stone, of Mobile, has deposited in the General Land office of the United States a certificate of the Register of the land office at St. Stephen's, whereby it appears that full payment has been made by the said William D. Stone, according to the act of Congress of the 24th of April, 1820, entitled "An act making further provision for the sale of the public land," for the southeast subdivision of fractional section twenty-two, in township four, south of range one west, in the district of lands subject to sale at St. Stephen's, Alabama, containing one hundred and ten acres and fifty one-hundredths of an acre, according to the official plat of the survey of said land returned to the General Land Office by the surveyor general, which said tract has been purchased by the said William D. Stone.

Now know ye, that the United States of America, in consideration of the premises, and in conformity with the several acts of

Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said William D. Stone, and his heirs, the said tract above described. To have and to hold the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said William D. Stone and to his heirs and assigns forever.

In testimony whereof, I, Andrew Jackson, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereto affixed.

Given under my hand, at the city of Washington, the seventeenth day of December, in the year of our Lord one thousand eight hundred and thirty-two, and of the United States of America the fifty-seventh.

By the President: ANDREW JACKSON.

JOHN MOORE,

Acting Com'r of the General Land Office.

Recorded, vol. 6, page 263. Ex'd.

Application of Etheridge, (C.)

To the register and receiver of the land office at St. Stephen's:

You will please to take notice that I, James Etheridge, of Mobile county, Alabama, claim the right of pre-emption, under the act of Congress of the 29th May, 1830, to the southwest quarter-section 22, t. 4, r. 1 west.

Affidavit.

James Etheridge, being sworn, maketh oath that the above described tract of land was planted and cultivated by him in the year 1829, and remained in his possession from the year 1829 until after the 29th May, 1830. That the said land was occupied and cultivated by him in his own right, and not as the tenant of any other person. That the said land was enclosed with his own fence, and that there was no person concerned with him in the occupation and cultivation of the said land; and that the present claim does not interfere with the right of any other person, and that he believes he is entitled to the same under the act of Congress of the 29th May, 1830, and that the said tract is within the corporate limits of the city of Mobile.

J. ETHERIDGE.

Proof.

Daniel Robertson and John Carr, being sworn, make oath that they are acquainted with the situation of the above described tract of land; that the said land was cultivated by the said James Etheridge in the year 1829, and remained in his possession until after

the 29th May, 1830, and that they believe the above affidavit of the said Etheridge to be correct.

DANIEL ROBERTS,
JOHN CARR.

Sworn to and subscribed before me, this 28th January, 1831.
V. DEANE, *Justice of the Peace.*

Certificate.

LAND OFFICE *at St. Stephen's, Alabama,*
14th December, 1840.

I do hereby certify that the annexed and foregoing application for pre-emption, benefit of James Etheridge is a true copy from the original application found on file in this office.

JAMES MAGOFFIN, *Register.* [L. S.]

Application of Stone—(D.)

To the register and receiver of the land office at St. Stephen's, Alabama:

You will please to take notice that I, William D. Stone, of Mobile county, Alabama, claim the right of pre-emption, under the act of Congress of the 29th of May, 1830, to the fraction situated in the west part of the southeast quarter of section 22, in township 4, range 1, west of 13.

WILLIAM D. STONE.

Affidavit.

William D. Stone, being sworn, maketh oath that the above described tract of land was planted and cultivated by him in the year 1829, and remained in his possession from the year 1829 until the 29th May, 1830, and that the said land was occupied and cultivated by him in his own right, and not as the tenant of any other person. That the said tract of land was enclosed with his own fence, and that there was no person concerned or connected with him in the cultivation of said land, and that this present claim does not interfere with the rights of any other person; and further, that the tract described is within the present corporate limits of the city of Mobile.

WILLIAM D. STONE.

Sworn to and subscribed before me, this 25th March, 1831.

——— ———.

Affidavits.

Samuel H. Garrow and James Dowell, being duly sworn, make oath that they are acquainted with the situation of the above described tract of land; that the said land was cultivated by the said Wm. D. Stone in the year 1829, and remained in his possession

until after the 29th May, 1830, and that they believe the above affidavit of the said William D. Stone to be correct and true.

S. H. GARROW,
JAMES DOWELL.

STATE OF ALABAMA, *city and county of Mobile:*

Personally appeared before me, Henry Daggett, a notary public for the State and county aforesaid, duly commissioned and sworn, and legally authorized to administer oaths, the within named William D. Stone, Samuel H. Garrow, and James Dowell, who being duly sworn, made oath that the foregoing affidavit by them subscribed is in every respect just and true.

In testimony whereof, I have hereunto subscribed my name and affixed my notarial seal, the twenty-fifth day of March, in the year of our Lord one thousand eight hundred and thirty-one.

HENRY DAGGETT, *Notary Public.*

Certificate.

LAND OFFICE, *St. Stephen's, Alabama,*
14th December, 1840.

I do hereby certify that the annexed and foregoing pre-emption application of William D. Stone is a true copy of the one on file in this office, and that the original is in the handwriting of said Stone.

Witness my hand [and] private seal, having no seal of office.

JAMES MAGOFFIN, [L. S.] *Register.*

E.—Extract from abstract of claims to pre-emption, under the act of 29th May, 1830.

LAND OFFICE, ST. STEPHEN'S, *Alabama.*

Abstract of claims to pre-emptions to lands that are reported to have been surveyed, but the township plats not furnished to this office.

No.	By whom claimed.	Residence.	Tract.	Sec.	T.	R.	Quantity. D.	Quantity. C.	Rate. D.	Rate. C.	Amount. D.	Amount. C.
2	James Etheridge -	Mobile -	S. W. qr. - -	22	4	1 W.						
15	Wm. D. Stone -	Do -	Fraction 22 and -	27	4	1 W.						
			All lying south of 31° except claim No. 40.									

LAND OFFICE, ST. STEPHENS, ALA., 20 *June*, 1831.

It is the opinion of the undersigned, that the foregoing claimants are each entitled to the right of pre-emption, under the act of Congress of the 29th May, 1830, to the tract or tracts by them claimed, and annexed to their names respectively, in the foregoing abstract.

JOHN B. HAZARD, *Register.*
J. H. OWEN, *Receiver.*

LAND OFFICE, ST. STEPHENS, ALA., 14*th December*, 1840.

I do hereby certify, that the annexed abstract of claims to pre-emptions, under the act of the 29th May, 1830, is correctly copied from the register of such claims, as the same is found in this office, and that the same is in the handwriting of the register, John B. Hazard. Witness my hand and private seal, having no seal of office.

JAMES MAGOFFIN, [L. S.] *Register.*

F.

Extract from account of land sold by register and receiver.

Account of lands sold, and moneys entered in payment therefor, in April, 1832.

When sold.	By whom purchased.		No. of receipt.	Tract.			Acres.	Price.	Amount.	
	Purchaser.	Residence.		Section.	T.	R.				
1832.										
April 30	James Etheridge -	Mobile -	4,539	S. W. qr. 22 -	4 So.	1 W.	9,267	1 25	115 83	Pre-emption So.
"	Wm. D. Stone -	Do -	4,547	S. E. subdiv. pr. sec. 22	4 So.	1 W.	11,050	1 25	138 13	31st.

LAND OFFICE, ST. STEPHENS, ALA., *January* 5, 1841.

I do hereby certify, that the above is correctly copied from the book of record of land sold at this office. Witness my hand and private seal, having no seal of office.

JAMES MAGOFFIN, [L. S.] *Register.*

Lessee of Brown and wife vs. Clements and Hunt.

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G.—*Certificate.*

Pre-emption No. 4,539, act 29th May, 1830.

LAND OFFICE, ST. STEPHEN'S,
ALA., 30*th April*, 1832.

It is hereby certified, that, in pursuance of law, James Etheridge, of Mobile county, Alabama, on this day purchased of the register of this office, the lot or southwest quarter of section number twenty-two, of township No. 4 south, in range number one west, containing ninety-two $\frac{67}{100}$ acres, at the rate of one dollar and twenty-five cents per acre, amounting to one hundred and fifteen $\frac{83}{100}$ dollars, for which the said James Etheridge has made payment in full, as required by law.

Now, therefore, be it known, that on presentation of this certificate to the Commissioner of the General Land Office, the said James Etheridge shall be entitled to receive a patent for the lot above described.

JOHN B. HAZARD, *Register.*

GENERAL LAND OFFICE,
November 18, 1840.

I, James Whitcomb, Commissioner of the General Land Office, do hereby certify, that the above is a true copy of the original on file in this office.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

JAMES WHITCOMB, [L. S.]

H.

Extract from record of certificates issued.

Record of certificates issued for lands sold, &c.

Date of certificate.	No. of certificate.	Name.	Residence.	Tract. Sec. or part of Sec.		T.	R.	Quantity. Acres.	Hdth.	Price. D.	C.	Amount. D.	C.
1832.													
April 30	4,539	James Etheridge - -	Mobile co. -	Southwest 22 -	22	4	1 W.	92	67	1	25	115	83
"	4,547	William D. Stone -	Do -	S. E. sub. frac. -	22	4	1 W.	110	50	1	25	138	13

LAND OFFICE, ST. STEPHEN'S, ALA., *January* 5, 1841.

I do hereby certify, that the above is correctly copied from the book of record of certificates, issued at this office, for lands sold.

Witness my hand and private seal, having no seal of office.

JAMES MAGOFFIN, [L. S.] *Register.*

Lessee of Brown and wife vs. Clements and Hunt.

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Bill of exceptions.

Be it remembered, that upon the trial of this cause, the plaintiffs gave in evidence the paper hereto annexed, marked A, being a duly certified copy of a patent from the United States Government to James Etheridge; and thereupon, it was admitted by the defendants, that the plaintiffs had, at the date of the demise, and time of trial, all the rights of said patentee Etheridge in the land described in the declaration. Plaintiffs also gave in evidence paper marked B, hereto annexed, being a plat of a survey made and returned, under an order of this court, by the surveyor for the county of Mobile, and proved by said surveyor that said survey was truly made, according to said order, and that the plat returned shows correctly the external lines and corners of said fractional section twenty-two. That he found the southwest corner of said fractional section, as shown by the plat returned; and also found, on the section lines of said fraction section, the half mile posts, each post being a half mile from the southwest corner of said fractional section. That these posts bore evidence of being those put down by the United States surveyor, on running the section lines. That an entire southwest quarter exists in said fractional section, without interference with any private land claim, and leaving a residuum both on the north and on the east of said quarter-section, as shown by the plat returned by him; and also, that said fractional section contains two hundred and ten acres. The defendants admitted that they were in possession, at the time of service of the declaration, of sixteen acres of the land described in the declaration. The defendants gave in evidence, by consent of plaintiffs, a certified copy of a patent from the United States Government to William D. Stone, hereto annexed, marked No. 1; and thereupon, it was admitted by the plaintiffs, that the defendants have all the rights of the said patentee Stone, in the land admitted to have been in their possession at the time of the service of the declaration.

The defendants offered in evidence duly certified copies of the official township plats of 1832 and 1835, of the township in which the land sued for is situated, (extracts from which are hereunto annexed, marked No. 2,) to shew the boundaries and contents of the land described in said patents to said Etheridge and to said Stone, without having offered, or professing to have any other evidence than the plats themselves afford, to prove that the subdivision, corners, and lines dividing said fractional section, as exhibited in the said plats, had been run and marked on the ground. To the admission of which evidence the plaintiffs objected; and their objection was overruled, and said plats allowed to go to the jury. The plaintiffs admitted, that if the line, as marked on said extract from plats (No. 2) dividing lots A and B, is a legal line, lot B, as exhibited, will cover the land sued for.

The plaintiffs further gave in evidence, that the said line and corners, as exhibited on the extract, (No. 2,) had never been run or

marked on the ground; and also gave in evidence papers marked C, D, E, F, G, H, being duly certified transcripts of records from the land office at St. Stephen's, Alabama.

The defendants gave in evidence paper marked No. 3, being a duly certified copy of the instructions of the Secretary of the Treasury bearing date the 10th day of June, 1820, also 20th January, 1826.

The plaintiff gave in evidence paper marked I, being a duly certified copy of the circular of the Secretary of the Treasury of date the 8th day of May, 1832.

Upon the foregoing evidence, the court instructed the jury, that if they believed the same, they must find for the defendants. The court further instructed the jury, that if said fractional section (No. 22) was capable of being subdivided into an entire southwest quarter-section and two half quarter-sections, leaving a residuum as shewn by the said map and evidence of the county surveyor, still the surveyor general was not required, under the acts of Congress providing for the subdivision of the public land, and the instructions of the Secretary of the Treasury made under the act of the 24th of April, 1820, entitled "An act making further provision for the sale of the public lands," to make, in his subdivision of the same, either such quarter-section or half quarter-sections, but might lawfully subdivide the same into two lots, (A and B,) as indicated by said plat of 1832; and that under said evidence, Etheridge's title would not hold the whole southwest quarter of said fractional section, but only lot A, and that Stone's title would hold lot B, being the balance of said fractional section.

To which instructions, and each and every of them, the plaintiffs, by their counsel, except, and pray the court to sign and seal this their bill of exceptions.

E. L. DARGAN. [SEAL.]

Agreement of the parties.

The parties to this cause, not wishing to encumber the record by copying from the book entitled "General public acts of Congress respecting the sale and disposition of the public lands, with instructions issued from time to time by the Secretary of the Treasury and Commissioner of the General Land Office, and official opinions of the Attorney General on questions arising under the land laws," and which instructions are contained in the 2d volume, part 2d, prepared and printed by order of the Senate, agree that said book may be used by either party, and anything therein contained read as illustration of the practice of the land office and construction that the acts of Congress had received in that branch of the Government. The same work can be referred to by either party in the Supreme Court, for the purpose aforesaid. The parties further agree, that for exhibit No. 2, being the official map of the survey of the township described in the patents of both plaintiff and de-

fendants, the map contained in the same book above described, between pages 134 and 135, shall be referred to as if the same was incorporated with, and formed a part of, the record in this cause.

SHERMAN & CHAMBERS,
Attorneys for Plaintiffs.
GORDON, CAMPBELL, & CHANDLER,
Attorneys for Defendants.

May 28, 1841.

Judgment.

This day came the parties, by their attorneys; and thereupon came a jury, to wit, William Crothers and eleven others, good and lawful men, who, being sworn to try the issue joined, upon their oaths do say: We the jury find the defendants not guilty of the trespass and ejectment in the declaration mentioned.

It is therefore considered by the court, that the defendants go hence, without day, and recover from the plaintiffs their costs by them about their defence in this behalf expended, for which execution may issue.

From which verdict and decision of the court the plaintiffs pray an appeal to the supreme court of the State of Alabama next to be holden, and tendered their bond for that purpose, with John M. Brown and James F. Hutchinson as their securities in the penal sum of three hundred dollars; which bond is approved by the court, and said appeal allowed.

Appeal bond.

THE STATE OF ALABAMA, *Mobile county:*

Know all men, that we, William L. Brown, James F. Hutchinson, and John M. Brown, are held and firmly bound unto Jonathan Hunt and Joseph Clements, their heirs, executors, and administrators, in the sum of three hundred dollars, for the payment of which we jointly and severally bind ourselves, our heirs, executors, or administrators, firmly by these presents. Sealed with our seals, and dated this 28th day of May, 1841.

The condition of the above obligation is such, that whereas, the above bounden William L. Brown and wife have this day applied for and obtained an appeal to the June term, 1841, of the supreme court of Alabama, to supersede and reverse a judgment recovered by said Jonathan Hunt and J. Clements against the said William L. Brown and wife, at the April term, 1841, of the circuit court of Mobile county, in a certain action of ejectment instituted by the said William L. Brown and wife against said Jonathan Hunt and Joseph Clements, in which suit the verdict was for the defendants: now if the said William L. Brown and wife shall prosecute to effect their said appeal in the supreme court of said State of Alabama, and shall pay and satisfy such judgment as the supreme court shall

render in the premises, then this obligation to be null and void, otherwise, to be and remain in full force and effect.

WILLIAM L. BROWN, [SEAL.]
JAMES F. HUTCHINSON, [SEAL.]
JOHN M. BROWN. [SEAL.]

THE STATE OF ALABAMA, *Mobile county:*

I, Malcolm J. McRae, clerk of the circuit court for said county, certify that the foregoing is a full and correct transcript of the record in the above entitled cause, as the same is on file in my office, and that the foregoing is a correct copy of the appeal bond entered into by the said plaintiffs in said cause.

Given under my hand and seal of office, this fifth day of June, A. D. 1841.

M. J. McRAE, *Clerk C. C. M. C.* [SEAL.]

And at the June term, 1841, of the supreme court, the following assignment of errors was filed by said appellants:

Assignment of errors.

JOHN DOE, on the demise of William L. Brown and wife,
vs.
R. ROE, (i. e. Joseph Clements and Jonathan Hunt.)

Supreme court of the State of Alabama, June term, 1841.

And the said William L. Brown and wife, by their attorneys, come and shew to the court now here, that in the record and proceedings, and rendering of judgment in this cause, in the court below, there is manifest error in this, to wit: The court erred in the several charges given, and in the admission of evidence, as shewn in the bill of exceptions; for which, and other errors, they pray the said judgment be reversed and for nothing held.

SHERMAN & CHAMBERS,
Attorneys for Appellants.

And the cause having been continued from term to term, until June term, 1842, when, on the 9th day of June, being a day of the said term of the supreme court—present all the judges of the said came the parties, by their attorneys, and thereupon the record in this cause, and the matters therein assigned as errors having been argued and examined, it seems to the court, that in the record and proceedings of said circuit court there is no error.

// It is therefore considered by the court, that the judgment of said circuit court be in all things affirmed, and that the said Joseph Clements and Jonathan Hunt recover of the said William L. Brown and wife, James F. Hutchinson, and John M. Brown, the costs of this cause in this court. //

Justices Goldthwaite and Ormond not sitting in this case, because they were interested in the question decided.

Clerk's office of the supreme court.

I, James B. Wallace, clerk of said court, do hereby certify that the above is a correct transcript of the record and proceedings of said court, in the case [of] John Doe, *ex dem.* Wm. L. Brown and wife, vs. Richard Roe, (i. e. Joseph Clements and Jonathan Hunt,) decided at June term, 1842, the original of which is on file and remains of record in my office.

In testimony whereof, I have hereunto set my hand and [L. S.] caused the seal of said court to be affixed, at office, this 25th day of August, A. D. 1842.

JAMES B. WALLACE,
Clerk Supreme Court.

UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the honorable judges of the supreme court of the State of Alabama, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said supreme court before you, being the highest court of law and equity in said State in which a decision could be had, in a suit between John Doe ex dem. William L. Brown and wife, and Joseph Clements and Jonathan Hunt, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under said State, on the ground of their being repugnant to the constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the constitution, or of a treaty, or statute of, or a commission held under, the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said constitution, treaty, statute, or commission—a manifest error hath happened, to the great damage of the said William L. Brown and wife, as by their complaint appears. We, being willing that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, command you, if judgment be therein given, that then, under your seal distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of January next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected by the said Supreme Court, they may cause to be further done therein to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the Su-

preme Court of the United States, this 27th day of August, in the year of our Lord one thousand eight hundred and forty-two.

Allowed by HENRY W. COLLIER,
Chief Justice of the Supreme Court of Alabama.

The United States of America, to Joseph Clements and Jonathan Hunt.

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday in January next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Alabama, wherein John Doe *ex dem.* William L. Brown and wife are plaintiffs in error, and you are defendants in error, to shew cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this 27th day of August, in the year of our Lord one thousand eight hundred and forty-two.

HENRY W. COLLIER,
Chief Justice of the Supreme Court of Alabama.

Service acknowledged.
CAMPBELL & CHANDLER, *for Def'ts.*
August 30, 1842.

Know all men by these presents, that we, William L. Brown, John M. Brown, and J. D. Godbold, are held and firmly bound unto Joseph Clements and Jonathan Hunt, in the full and just sum of two hundred dollars, to be paid to the said Joseph Clements and Jonathan Hunt, their certain attorney, executors, administrators, or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents—sealed with our seals, and dated this twenty-seventh day of August, in the year of our Lord one thousand eight hundred and forty-two.

Whereas lately, at a term of the supreme court of the State of Alabama, begun and held upon the first Monday of June, 1842, in a suit depending in said court between John Doe, on the demise of William L. Brown and wife, plaintiffs, against Joseph Clements and Jonathan Hunt, defendants, judgment was rendered against the said plaintiffs, and the said plaintiffs having obtained a writ of error, and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Joseph Clements and Jonathan Hunt, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington the second Monday of January next:

Now the condition of the above obligation is such, that if the said William L. Brown and wife shall prosecute their said writ of error to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void, else to remain in full force and virtue.

Sealed and delivered in the presence of.

WM. L. BROWN, [SEAL.]
JOHN M. BROWN, [SEAL.]
J. D. GODBOLD. [SEAL.]

Approved by

Filed 9th January, 1843.

529.

SUPREME COURT OF THE UNITED STATES.

No 61.

JAMES CHESTON, PLAINTIFF IN ERROR,

vs.

THE APPEAL TAX COURT.

IN ERROR TO THE COURT OF APPEAL FOR THE WESTERN SHORE OF MARYLAND.

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J. & G. S. Gideon, Printers.

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the court of appeals for the Western Shore of Maryland, greeting:

[L. S.] Because, in the record and proceedings, as also in the rendition of a judgment of a plea, which is in the said court before you, or some of you, between James Cheston, appellant, and the Appeal Tax Court, appellee, a manifest error hath happened to the great damage of the said James Cheston, as by his complaint appears; we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday in January next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the hon. Roger B. Taney, chief justice of our Supreme Court, the second Monday in January, in the year of our Lord one thousand eight hundred and forty-two.

Issued 16th November, 1842.

THO. SPICER,
Clerk Circuit Court U. States for the Maryland dist.

MARYLAND, *sct:*

At a court of appeals of the State of Maryland, one of the United States of America, begun and held for the Western Shore of the said State, at the city of Annapolis, on the first Monday of December, in the year of our Lord one thousand eight hundred and forty-one, being the sixth day of the same month, and the sixty-sixth year of the independence of the said United States, present:

John Buchanan, *Chief Judge.*
The hon. John Stephen,
Stevenson Archer,
Thomas B. Dorsey,
Ezekiel F. Chambers,
Ara Spence,
} *Associate Judges.*

RICHARD W. GILL, *Clerk.*

In the record of proceedings of the same court, among others, were the following, to wit:

Be it remembered, that now here, on the first Monday of December, being the sixth day of the said month, in the year of our Lord one thousand eight hundred and forty-one, the Appeal Tax Court of the city of Baltimore, in pursuance of the directions of the act of the General Assembly of Maryland of March session, in the year of our Lord one thousand eight hundred and forty-one, chapter twenty-three, entitled "an act for the general valuation and assessment of property in this State, and to provide a tax to pay the debts of the State," transmit to the court of appeals here the record of proceedings of a plea which was lately depending before the said Appeal Tax Court in the city of Baltimore, and wherein the said Appeal Tax Court gave judgment, confirming the assessment under the act aforesaid of certain capital stock in the "Farmers' and Planters' Bank of Baltimore," and from which said judgment, confirming the assessment aforesaid, a certain James Cheston appealed to the court of appeals here. The tenor of which said record of proceedings is in form following, to wit:

By the provisions of an act of the General Assembly of Maryland, passed April 1st, 1841, chap. 23, entitled "an act for the valuation and assessment of property in this State, and to provide a tax to pay the debts of the State," a board of assessors was appointed in and for the city of Baltimore, and under the further provisions of the said act the said assessors obtained *form* the "Farmers' and Planters' Bank of Baltimore," a list of the resident and non-resident stockholders in said bank, together with the number of the shares of the capital stock held by each stockholder, which stock the said assessors valued and assessed, and returned to the Appeal Tax Court appointed under the provisions of said act in and for the said city of Baltimore; the first returned as a resident stockholder in said bank is Corban Amos as the owner of 80 shares of the capital stock of the said Farmers' and Planters' Bank of Baltimore, valued and assessed at nineteen dollars and fifty cents for each share, amounting to the sum of fifteen hundred and sixty dollars ($1,560.)

The said Appeal Tax Court confirmed the assessment thus made, upon the ground that the 1st and 17th sections of the said act provides for valuing and assessing the capital stock of banking and other private corporations owned by resident and non-resident stockholders. From which decision G. L. Dulaney and J. Meredith, esqrs., attorneys for said Corban Amos, appealed in words following, viz:

"Corban Amos, a citizen of Baltimore, objects to the valuation and assessment levied upon 80 shares of the capital stock of the

Farmers' and Planters' Bank of Baltimore, standing in his name upon the books of said bank, because the act of the General Assembly, passed on the 1st April, 1841, entitled "an act for the general valuation and assessment of property in this State, and to provide a tax to pay the debts of the State," so far as it imposes a tax to be *levied* and collected upon the capital stock of the Farmers' and Planters' Bank of Baltimore in the hands of the stockholders thereof, is a law impairing the obligation of contracts, and is, therefore, unconstitutional and void; and if the said law should not be held to impair the obligations of the contracts of the State with the Banks chartered in the city of Baltimore prior to the year 1830, then according to the true construction of the act of 1841, it does not apply to the Farmers' and Planters' Bank of Baltimore, it not being the design of that act to impose unequal burthens upon the stockholders of the different banks in the city of Baltimore, but that they should all be equally taxed.

A list of the resident Stockholders in the Farmers' and Planters' Bank of Baltimore, continued.

Corban Amos—80 shares assessed	a	$19½	$1,560	
James W. Allnutt—100 shares assessed	a	-	1,950	
Hanna Appleton—26 shares assessed	a	-	507	
Armstrong & Berry—12 shares assessed	a	-	228	
W. J. Albert—100 shares assessed	a	-	1,950	
John Bradford—192 shares assessed	a	-	3,744	
Hugh Boyle—100 shares assessed	a	-	1,950	
Ann E. Bradford—10 shares assessed	a	-	195	
Jno. Boggs & Co.—100 shares assessed	a	-	1,950	
Thomas Blake—400 shares assessed	a	-	7,800	
Augustus A. Bradford—4 shares assessed	a	-	78	
Nicholas Baylies—16 shares assessed	a	-	312	
John Buckler—60 shares assessed	a	-	1,170	

Resident stockholders in the Farmers' and Planters' Bank of Baltimore.

John Barney & Son—200 shares assessed	a	$19½	$3,900	
R. D. Burnes—600 shares assessed	a	-	11,700	
Galaway Cheston—160 shares assessed	a	-	3,120	
Jesse Comegys—5 shares assessed	a	-	97	50
Charles Cockron, jun'r—24 shares assessed	a	-	468	
James Cheston—125 shares assessed	a	-	2,437	50
James Cheston & Son—25 shares assessed	a	-	487	50
Luther J. Cox—200 shares assessed	a	-	3,900	
Wm. Cook—5 shares assessed	a	-	97	50
Wm. Howel & Sons, att'ys—100 shares ass'd	a	-	1,950	
E. P. Cohen—41 shares assessed	a	-	799	50
Alex'r Crawford—100 shares assessed	a	-	1,950	
Z. H. Cooch—100 shares assessed	a	-	1,950	
Samuel Cheston—40 shares assessed	a	-	780	

Clark & Hellogg—483 shares assessed	a		$9,418 50
Nelson Clark—319 shares assessed	a		6,210 50
John G. Chappell—13 shares assessed	a		253 50

Resident stockholders in the Farmers' and Planters' Bank of Baltimore, continued.

Edmond Didier—100 shares assessed	a	$19½	$1,950
Samuel J. Donaldson—14 shares assessed	a		273
James Duhamel—26 shares assessed	a		507
Jno. J. Donaldson—10 shares assessed	a		195
Benj'n Debruler—24 shares assessed	a		468
E. A. Dalrimple—13 shares assessed	a		253 50
Wm. Dalrimple—6 shares assessed	a		117
Adeline M. Didier—45 shares assessed	a		877 50
James Dixon—2 shares assessed	a		39
Catharine Donaldson—50 shares assessed	a		975
Emory & Stephens—20 shares assessed	a		390
John Edmonson—10 shares assessed	a		195
Elenore S. Eichelberger—8 shares assessed	a		156
Wm. Finley—50 shares assessed	a		975
Wm. Fisher—40 shares assessed	a		780
Mary A. Fisher—40 shares assessed	a		780
Joseph P. Grant—300 shares assessed	a		5,850

Resident stockholders in the Farmers' and Planters' Bank.

Jno. S. Gittings—27 shares assessed	a	$19½	$536 50
Geo. S. Gipson—37 shares assessed	a		721 50
Rebecka Guest—3 shares assessed	a		58 50
John Hen—50 shares assessed	a		975
S. House & Son—5 shares assessed	a		97 50
Wm. Hineman—20 shares assessed	a		390
James Hooper & Son—264 shares assessed	a		5,148
E. Hogdenarp—50 shares assessed	a		975
Geo. Hutson—54 shares assessed	a		1,043
Dan'l W. Hall—100 shares assessed	a		1,950
Robt. Hooper—6 shares assessed	a		117
Hugh Jenkins—200 shares assessed	a		3,900
Sam'l G. Jones—53 shares assessed	a		1,033 50
C. C. Jamison—80 shares assessed	a		1,560
David Keener—4 shares assessed	a		78
Benj'n Kurtz—20 shares assessed	a		390
Edm'd Kenley—100 shares assessed	a		1,950

Resident stockholders in the Farmers' and Planters' Bank of Baltimore, continued.

Joseph King, jun'r—90 shares assessed	a	$19½	$1,755
Aaron Kellogg—100 shares assessed	a		1,950
Lucas & Deaver—2 shares assessed	a		39

John Loney—1 share assessed	-	a	-	$19 50
Eliza Lindenberger—24 shares assessed	-	a	-	468
Elizabeth Lawrason—25 shares assessed	-	a	-	487 50
R. Lemmon & Co.—50 shares assessed	-	a	-	975
Edw'd R. Lusby—32 shares assessed	-	a	-	624
Cornelius Landsdale—77 shares assessed	-	a	-	1,501 50
Wm. E. Mayhew & Co.—30 shares assessed		a	-	585
Edward Mumma—8 shares assessed	-	a	-	156
J. H. McCulloh—100 shares assessed	-	a	-	1,950
Ann Mitchell—20 shares assessed	-	a	-	390
Thos. Whitridge, agent—100 shares assessed		a	-	1,950
Wm. Morris—190 shares assessed	-	a	-	3,705
Sam'l Mactier—30 shares assessed	-	a	-	585
Thomas H. Morris—330 shares assessed	-	a	-	6,435

Resident stockholders in the Farmers' and Planters' Bank of Baltimore.

Jno. R. Moon—25 shares assessed	-	a	$19½	$475
Jno. G. Morris—40 shares assessed	-	a	-	780
Asa Needham—20 shares assessed	-	a	-	390
Harriett W. Nelson—8 shares assessed		a	-	156
Henry Patterson—130 shares assessed	-	a	-	2,525
Wm. Palmer—20 shares assessed	-	a	-	390
Henry Pike—25 shares assessed	-	a	-	475
E. Patterson—13 shares assessed	-	a	-	253 50
Enock Pratt—200 shares assessed	-	a	-	3,900
Sam'l Ready—50 shares assessed	-	a	-	950
Noah Ridgeley—30 shares assessed	-	a	-	585
F. Rodewald & *D*—69 shares assessed	-	a	-	1,345 50
F. Rodewald—44 shares assessed	-	a	-	858
E. A. W. Riggan—110 shares assessed	-	a	-	2,145
L. A. Riggan—40 shares assessed	-	a	-	780
Mary & Isaac Ramsey—20 shares assessed	-	a	-	390
Arthur Rule, sen'r—20 shares assessed	-	a	-	390

Resident stockholders in the Farmers' and Planters' Bank of Baltimore.

George Ruckle—45 shares assessed	-	a	$19½	$877 50
John E. Reese—19 shares assessed	-	a	-	370 50
Cath'n Stricker—10 shares assessed	-	a	-	195
John Smith—10 shares assessed	-	a	-	195
Alexander Smith—10 shares assessed	-	a	-	195
Savings' Bank of Baltimore—1,877 shares assessed	-	a	-	36,601 50
Geo. Stonebraker—90 shares assessed	-	a	-	1,755
T. P. Scott, (trustee)—70 shares assessed	-	a	-	1,465
Robt. Starr—10 shares assessed	-	a	-	195
B. Suxar—180 shares assessed	-	a	-	3,500
M. N. Simkins—50 shares assessed	-	a	-	950
B. R. Spalding—249 shares assessed	-	a	-	4,858 50

Josia Small—120 shares assessed	- a -		$2,340
Peter Sourrwine—20 shares assessed	- a -		390
Wm. A. Stewart—200 shares assessed	- a -		3,900
Ellenore Thomas—20 shares assessed	- a -		390
Thompson & Son—260 shares assessed	- a -		5,070

Resident stockholders in the Farmers' and Planters' Bank of Baltimore.

Wm. A. Tucker—50 shares assessed	- a $19½	$950	
Isaac Tyson—5 shares assessed	- - a -	97	50
Robert Taylor—15 shares assessed	- - a -	292	50
Sarah Usher—8 shares assessed	- - a -	156	
T. Woolen, Wm. Rogers—40 shares assessed	a -	780	
Robert Wilson—20 shares assessed	- - a -	390	
E. C. Wysham—325 shares assessed	- a -	6,337	50
Jos. G. Waters—5 shares assessed	- - a -	97	50
H. H. Williams—140 shares assessed	- a -	2,730	
Thos. Whitridge—400 shares assessed	- a -	7,800	
Susan F. Williams—11 shares assessed	- a -	205	50
July A. Wilson—5 shares assessed	- - a -	97	50
Charles Warfield—61 shares assessed	- a -	1,189	00
Wilson & Herr—25 shares assessed	- a -	475	
Mary P. Wilson—22 shares assessed	- a -	429	
David S. Wilson—151 shares assessed	- a -	2,944	50
B. C. Ward—114 shares assessed	- - a -	2,223	

Resident stockholders in the Farmers' and Planters' Bank of Baltimore.

Weld & Jenks—100 shares assessed	- a -	$1,950
Wm. C. Wilson—100 shares assessed	- a -	1,950

The whole of [the] foregoing resident stockholders' assessment, commencing with Corban Amos and ending with William C. Wilson, are embraced in the decision of the Appeal Tax Court, as stated in the case of Corban Amos, and are also embraced in the appeal entered by G. L. Dulany and J. Meredith, esqrs., as stated in connection with the case of Corban Amos, excepting the clause declaring it to be against the bill of rights.

We hereby certify that the foregoing is a correct transcript from the journal of the proceedings of the Appeal Tax Court.

GEO. MYERS,
JOSEPH BROWN,
JNO. B. SEIDENSTRICKER,
Appeal Tax Court.

CITY HALL, *Baltimore.*

Non-resident stockholders in Farmers' and Planters' Bank of Baltimore.

James Edgar & Co., Charleston, S. C.—100 shares assessed	- - - - a -	$1,950
John Blair, Charleston, S. C.—400 shares assessed	- - - - - a -	13,800

Alexander Blake, Charleston, S. C.—100 shares assessed	a	-	$1,950
Josiah Collins, North Carolina—45 shares assessed	a	-	877 50
Wm. B. Hubbard, Ohio—140 shares assessed	a	-	2,730
Thos. G. Lea, Ohio—20 shares assessed	a	-	390
Lee Page, Virginia—100 shares assessed	a	-	1,950
M. Levy, Charleston, S. C.—200 shares assessed	a	-	3,900
J. C. Levy, Charleston, S. C.—300 shares assessed	a	-	5,850
J. Leland & Bro., Charleston, S. C.—100 shares assessed	a	-	1,950
Wm. Law, Charleston, S. C.—200 shares assessed	a	-	3,900
Edward J. Pringle, Charleston, S. C.—200 shares assessed	a	-	3,900
Wm. B. Pringle, Charleston, S. C.—200 shares assessed	a	-	3,900
Robert Pringle, Charleston, S. C.—250 shares assessed	a	-	4,875
Eben Pettegrew, North Carolina—46 shares assessed	a	-	897
F. Leo. Quintell, Bremen—400 shares assessed	a	-	7,800
J. D. Ravend, Charleston, S. C.—100 shares assessed	a	-	1,950

The whole of the foregoing non-resident stockholders in the Farmers' and Planters' Bank of Baltimore—assessment commencing with James Edgar & Co., Charleston, S. C., and ending with J. D. Ravend, Charleston, S. C., inclusive—are embraced in the decision of the Appeal Tax Court, as stated in the case of Corban Amos, and are also embraced in the appeal entered by G. L. Dulany and J. Meredith, esqrs., attorneys, as stated in connection with the case of Corban Amos, with the addition that the same is also against the bill of rights.

The following is a list of the real estate held by the Farmers' and Planters' Bank of Baltimore, as valued and assessed by the assessors, and returned to the Appeal Tax Court, which valuation and assessment the said Appeal Tax Court confirmed on the ground that the 1st sec. of the act first recited directs an assessment of all real and personal property, subject, however, to exceptions, which exceptions *does* not extend to, nor embrace, property belonging to any bank.

Lot, 42 feet, E. side of South st., *a* $13 - - -	$6,825
Imps. 3 story b. dwellings - - - -	8,000
	$14,825

From which ——— of said Appeal Tax Court, G. L. Dulany and J. Meredith, esqrs., attorneys for said bank, appealed.

True copy from journal of said court.

GEO. MYERS,
JOSEPH BROWN,
JNO. B. SEIDENSTRICKER,
Appeal Tax Court.

BALTIMORE, *Nov. 23d*, 1841.

And now came into the court of appeals here, as well the said James Cheston, by his attorneys, Grafton L. Dulany and Jonathan Meredith, as the said "the Appeal Tax Court," (directed by law to be made appellee in the event of appeal by a party assessed under the act of the General Assembly aforesaid,) by J. Nevett Steele, Albert Constable, and Benjamin C. Howard, its attorneys; and thereupon, on motion of the said the Appeal Tax Court, by its attorneys aforesaid, it is ruled by the court here that the said James Cheston assign the errors in the record of proceedings aforesaid, or in the giving the judgment aforesaid, so as aforesaid brought before the court of appeal here for correcting errors supposed to be therein, or judgment by the court of appeal here will be entered against him in default thereof. And the said James Cheston, by his attorneys aforesaid, says, that in the record of proceedings aforesaid, and also in the giving of judgment aforesaid, there is manifest error, in this, to wit: that, by the record aforesaid, it appears that the judgment aforesaid, in the plea aforesaid given, was given for the confirmation of the assessment and valuation aforesaid, against the said James Cheston, when, by the law of the land, that judgment ought to have been given for the said James Cheston; therefore in that there is manifest error, and he prays that the judgment aforesaid for that error and others, being in the record of proceedings aforesaid, may be reversed, annulled, and held entirely as void, and that he, the said James Cheston, may be restored to all things which he has lost by occasion of the said judgment, and that the said the Appeal Tax Court may rejoin to the errors aforesaid, and so forth. And thereupon, it is ruled by the court of appeals here that the said the Appeal Tax Court join in the errors by the said James Cheston, above assigned in the record of proceedings aforesaid, or judgment by the court of appeals here will be rendered against it in default thereof. And the said the Appeal Tax Court, by its attorneys aforesaid, says, there is no error in the record of proceedings aforesaid, nor in the giving of the judgment aforesaid, and prays that the court of appeals here will proceed to the examination as well of the record of proceedings aforesaid, as of the matters aforesaid, by the said James Cheston above for error assigned, and that the said judgment may be, in all things, affirmed, and so forth. And the said James Cheston, and the said the Appeal Tax Court, by their attorneys aforesaid, file here in court an agreement and statement of facts and points of the tenor and in the words following, to wit:

BANKS IN THE CITY OF BALTIMORE, and stockholders,
vs.
The APPEAL TAX COURT for the city of Baltimore.

In the court of appeals, December term, 1841.

It is agreed that the appellant banks, to wit, "the Union Bank of Maryland," "the Bank of Baltimore," "the Mechanics' Bank of Baltimore," "the Commercial and Farmers' Bank of Baltimore," "the Marine Bank of Baltimore," and "the Farmers and Merchants' Bank of Baltimore," commonly called the old banks, were chartered previous to the year 1821; and that the new banks, to wit, "the Merchants' Bank of Baltimore," "the Farmers and Planters' Bank of Baltimore," "the Citizens' Bank of Baltimore," and "the Western Bank of Baltimore," were chartered since the year 1830; the respective periods of the incorporation of all the aforegoing banks appearing by reference to their charters.

It is admitted that the old banks have duly accepted and complied with the terms and conditions of the act of 1821, chap. 131, the manner of which acceptance appears by the paper marked A, herewith filed; and have also accepted and complied with the provisions of the act of 1834, chap. 274; and it is also admitted that taxes have always, since the incorporation of said banks, been levied and assessed upon their real and personal property in all the cities and counties of this State, in the same manner as upon property of the same kind belonging to individuals, and that said taxes have always been paid by said banks up to this time. And it is further admitted that said banks did not, at the time of the enactment of the act of 1841, chap. 23, nor have they at any time since, paid or redeemed their notes or other obligations in specie.

J. MEREDITH,
G. L. DULANY,
For appellants.
B. C. HOWARD,
A. CONSTABLE,
J. N. STEELE,
For appellees.

Upon the above statement of facts the appellants will contend—

1st. That the old banks having accepted of, and complied with, the terms and conditions of the act of 1821, chapter 131, a contract was created by the 11th section thereof on the part of the *the* State, "not to impose any further tax or burthen" upon said banks during the continuance of their charters under the 8th section of said act, and that this exemption from taxation extends to all the property of said banks, real and personal.

2d. That the 1st and 45th sections of the assessment act of 1841, chapter 23, does impose upon the old banks a further tax and burthen in violation of the said contract, and is therefore void, as against the provisions of the constitution of the United States.

3d. That if the said assessment law, so far as it imposes a further tax upon the old banks, should be declared void for the reason aforesaid, then the said act of 1841 is equally invalid, so far as it imposes an additional tax upon the new banks, as it thereby deprives the new banks of the immunity from further taxation granted to them by the 1st section of the act of 1835, chapter 142; which immunity from further taxation is itself a franchise, and when once granted cannot again be taken away. But if it could, the appellants will further contend that, according to the true construction of the said acts of 1841 and 1835, it was not the design of the legislature to burthen the new banks with any additional tax which would not equally apply to the old ones.

4th. That the imposition of a new tax of twenty cents on every one hundred dollar's worth of property, upon both the new and old banks, in addition to the tax heretofore paid by them, is unequal and oppressive, and in violation of the 13th section of the bill of rights.

5th. That the taxation of the stock of foreign or non-resident stockholders of said banks, is against the bill of rights, and therefore void.

G. L. DULANY, *Attorney for appellants.*

And upon the above statements of facts the counsel for the State, on behalf of the appellee, will contend—

1st. That, at the time of passing the general assessment law of 1841, there was no contract existing between the State and the banks, or any of them, or the stockholders therein, or any of them, by which any of the banks or stockholders can claim an exemption from the taxation imposed upon them by the said act of 1841.

2d. That the contract between the State and the old banks, if there be any contract, extends only to an exemption from further "taxes or burthens" of the corporate privileges of banking; and does not exempt the property, either real or personal, of said banks, or the individual stockholders therein.

3d. That even if the contract should be construed to exempt the real and personal property of the old banks, and the property of the stockholders therein, yet such exemption does not extend to the new banks, or those chartered since 1830; and moreover, that the power of revocation in certain cases in these charters reserves to the State the power of passing the general assessment law.

4th. That the imposition of a tax of twenty cents upon every one hundred dollar's worth of property, upon both the old and new banks, under the said assessment law, is neither unequal nor oppressive, nor in violation of the bill of rights.

5th. That taxation upon property within this State, wherever the owners may reside, is not against the bill of rights.

B. C. HOWARD,
A. CONSTABLE,
J. N. STEELE, *for appellees.*

Whereupon, as well the record and proceedings aforesaid, and the judgment given in form aforesaid, as the matters aforesaid by the said James Cheston above for error assigned being seen, and by the court of appeals here fully understood, and mature deliberation thereupon had; for that it appears to the court of appeals here, that there is no error in the record of proceedings aforesaid, nor in the giving of the judgment aforesaid; therefore, it is considered by the court of appeals here that the judgment aforesaid, given in form aforesaid, be in all things affirmed, and stand in full force and effect, the said causes for error above assigned and alleged in anywise notwithstanding. "

Test, RICHARD W. GILL, *Clerk.*

Afterwards, to wit, on the twelfth day of December, in the year of our Lord one thousand eight hundred and forty-two, the aforesaid James Cheston, by his attorney aforesaid, produced to the court of appeals here the writ of the United States for the correcting of errors of and upon the premises, commanding the record and proceedings of the judgment last aforesaid, so as aforesaid rendered, with all things concerning the same, to be transmitted to the Supreme Court of the United States; which said writ of error follows in these words, to wit:

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the court of appeals for the western shore of Maryland, greeting:

[L. S.] Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in the said court before you, or some of you, between James Cheston, appellant, and the Appeal Tax Court, appellee, a manifest error hath happened to the great damage of the said James Cheston, as by his complaint appears; we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday in January next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States should be done.

Witness the honorable Roger B. Taney, Chief Justice of our Supreme Court, the second Monday in January, in the year of our Lord one thousand eight hundred and forty-two.

Issued 16th November, 1842.

THO'S SPICER,

Clerk circuit court U. S. for the Maryland district.

In pursuance whereof, and according to the form and effect of the act of Congress of the United States in such case made and provided, a transcript of the record and proceedings of the judgment last aforesaid so as aforesaid rendered, with all things concerning the same, together with the said writ of error, are hereby transmitted to the said Supreme Court of the United States accordingly, &c.

Test, RICHARD W. GILL, *Clerk.*

MARYLAND, *sct:*

I, Richard W. Gill, clerk of the court of appeals for the western shore of Maryland, do hereby certify, that the [L. S.] aforegoing is truly taken from the record of proceedings of the court of appeals of the State of Maryland, for the western shore of said State.

In testimony whereof, I have hereunto set my hand as clerk, and affixed the seal of the said court of appeals, this twenty-third day of December, A. D. 1842.

R. W. GILL, *Clerk.*

MARYLAND, *sct:*

I, John Buchanan, chief judge of the State of Maryland for the court of appeals, do hereby certify that Richard W. Gill is clerk of the court of appeals for the western shore of Maryland, and that the foregoing attestation by him is in due form, and by the proper officer.

Given under my hand and seal this twenty-third day of December, in the year of our Lord one thousand eight hundred and forty-two.

JNO. BUCHANAN, [L. S.]

Filed Jan. 10, 1843.